No. 85-693

In the

Supreme Court of the United States

October Term, 1985

ASAHI METAL INDUSTRY CO., LTD.,
Petitioner,
v.
SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SOLANO
(CHENG SHIN RUBBER INDUSTRIAL CO., LTD.,
REAL PARTY IN INTEREST)
Respondent.

On Writ of Certiorari to the Supreme Court of the State of California

BRIEF OF AMICUS CURIAE CALIFORNIA MANUFACTURERS ASSOCIATION IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Did California exceed its powers under the Due Process Clause when it asserted personal jurisdiction over a foreign corporation that delivered its product into the stream of commerce with the expectation that the product would be purchased by consumers in California, and the product subsequently injured California consumers?

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INTEREST OF AMICUS CURIAE

Amicus curiae submits this brief[1] in support of respondent, as it did before the Supreme Court of the State of California, in order that future courts do not place misguided reliance upon the precedential value of this Court's decisions regarding the jurisdiction state courts may exercise over foreign or alien parties.

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[1] Amicus has secured the written consent of the parties, pursuant to Rule 36.2, such consent being filed concurrently with this brief.

Since 1918, the California Manufacturers Association (CMA) has represented those manufacturers and processors doing business in California. Current membership represents approximately 70 percent of California's industrial workforce, and company sizes range from the smallest business to the largest, multi-national corporations in the world. Founded to represent its members before the judiciary and state executive and legislative branches of government, CMA has devoted its resources to the development of accurate assessments of the impact upon which judicial decisions, state legislation and regulatory actions will have upon its member companies; in furtherance of this goal, CMA takes a proactive role in informing appropriate governmental and/or private entities of the ramifications of proposed action. A non-profit organization dedicated to the improvement of the business climate generally, and in California particularly, CMA has also established a non-profit educational foundation -- California Manufacturers Research and Educational Foundation -- in order to augment its goal of providing accurate information and the "big picture" on issues of world-wide import.

The consequences of the decision below upon CMA members specifically, and business generally, includes an impact upon the overall environment of fairness, based upon the standards and framework provided in *World-Wide Volkswagen*. The court's decision has protected the California consumer from duplicative and costly litigation which would otherwise be made necessary but for the granting of jurisdiction; and the manufacturer doing business in California, subjected to the

sword of myriad state laws, rules and regulations, should be entitled to seek a shield of protection from those same laws when faced with defending an action in court commenced as a result of the use of a faulty foreign or alien component.

A reversal of the California court's holding may jeopardize the lives, safety and health of California consumers, businesses and manufacturers, by providing another barrier which increases the difficulty an individual or company presently confronts when seeking a legitimate and lawful solution to the assignment of responsibility. Further, if alien or foreign manufacturers, which depend upon the California consumer marketplace to purchase the product within which its component has been integrated, may now escape assignment of responsibility within the state of the injured consumer or manufacturer doing business in the state, the foreign manufacturers will have absolutely no incentive to produce a product meeting the standards which our Congress and individual state legislatures have deemed appropriate for the protection of the citizenry of the United States. Such a reversal could be devastating to the manufacturers represented by CMA, as well as to the consumers who purchase their products.

Amicus believes the impact of a decision adverse to that of the California court will have implication worldwide, that a global view of the actual ramifications have not yet been adequately addressed, and that the information and argument contained herein may be of assistance to this Court in reaching its decision.

ARGUMENT

I

PETITIONER'S PRESENCE IN THE FORUM STATE CONSTITUTED SYSTEMATIC AND CONTINUOUS ACTIVITY WHICH INVOKED THE BENEFITS AND PROTECTION OF THE LAWS OF THE FORUM STATE AND GAVE RISE TO THE ACTIVITY SUED ON, AND WAS, THEREFORE, SUFFICIENT TO SATISFY THE DEMANDS OF DUE PROCESS.

The focus of the Court's opinion in the case of *International Shoe* was the definition of "presence" in the context of judgments rendered *in personam*. The Court stated ". . . due process requires only that in order to subject a defendant to a judgment *in personam, if he be not present within the territory of the forum,* he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'." *International Shoe Co. v. Washington,* 326 U.S. 310, 316 [66 S.Ct. 154, 90 L.Ed. 95] (1945) (*"International Shoe"*) quoting *Miliken v. Meyer,* 311 U. S. 457, 463 [61 S.Ct. 339, 85 L.Ed. 278] (1940). (Emphasis added.) Refering to the terms "present" and "presence" as symbolic of the fictive corporate personality, and as determinants of the activities of the corporation within a forum sufficient to satisfy the demands of due process, this Court created a spectrum of corporate activities which would define the boundaries of "presence" sufficient to render a corporation liable to suit. *International Shoe, supra,* 326 U.S. at p. 317. This Court envisioned the spectrum of corporate presence as ranging from the commission of some single or occasional act sufficient to impose a corporate liability, but not sufficient to confer state

authority to enforce such liability, to corporate operations of such a substantial nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities. *Id.*, at p. 317. Within these spectral demarcations, the Court asserted that "Presence" in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given. *Id.*, at p. 318. The Court further contemplated that some acts, ". . . because of their nature and quality and the circumstances of their commission, may be deemed sufficient to render the corporation liable to suit." *Id.*, at p. 318.

The Court concluded that the criteria for determining whether a corporation's "presence" was sufficient for Due Process purposes could be neither mechanical nor quantitative, but would depend rather on the "quality and nature of the activity in relation to the fair and orderly administration of the laws. . ." *International Shoe, supra,* 326 U.S. at p. 319. Thus, if the quality and nature of a corporation's activities are within the "spectrum of presence" as defined by the Court, the corporation "enjoys the benefits and protection of the laws of that state. . . [which] may give rise to obligations; and so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." *Id.*, at p. 319.

Amicus suggests that where, as here, a component manufacturer has for ten years delivered its product into the stream of commerce with the expectation that its product, as incorporated into a finished product, will be purchased in the forum state of California, California has not exceeded its powers under the Due Process Clause by asserting personal jurisdiction over petitioner. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298, [100 S.Ct. 559, 622 L.Ed. 2d 490] (1980) (*"World-Wide Volkswagen"*).

Petitioner, Asahi Metal Industry Co., Ltd. ("Asahi") is a major manufacturer of valve assemblies. Its product is incorporated into tubes sold throughout the world, including tubes sold to the large motorcycle manufacturers. For ten years, Asahi has done business with Respondent, Cheng Shin Rubber Industrial Co., Ltd. ("Cheng Shin"), a tube manufacturer that makes twenty percent of its United States sales in California. Between 1978 and 1982, Asahi sold 1,350,000 valve assemblies to Cheng Shin. *Asahi Metal Industry Co., Ltd. v. Superior Court* 39 Cal.3d 35 [216 Cal.Rptr. 385, 386, 387] (1985) (*"Asahi Metal Industry Co., Ltd."*). Moreover, Asahi knew than Cheng Shin incorporated Asahi's valve assemblies into tubes subsequently marketed and sold in the United States and California. *Asahi Metal Industry Co., Ltd., supra*, 216 Cal.Rptr. at pp. 391, 392.[2]

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[2]Petitioner's assertion that the resolution of the issue in this case should be based on contract rather than product liability considerations is without merit. The cause of action underlying the issue of personal jurisdiction was brought as a result of one death and severe injuries in the forum State sustained in an

Application of the standard for determining corporate "presence" as enunciated in *International Shoe* indicates that Asahi's sale of valve assemblies to Cheng Shin for a period of ten years with knowledge that the valve assemblies would be purchased in California, constituted systematic and continuous activity, which activity not only invoked the benefits and protection of the laws of California, but gave rise to the activity here sued on; therefore, Asahi's presence in the forum state is sufficient to satisfy the demands of due process.

II

PETITIONER'S SALE OF ITS PRODUCT IN CIRCUMSTANCES SUCH THAT IT KNEW THE PRODUCT WOULD BE RESOLD IN THE FORUM STATE CONSTITUTES PURPOSEFUL AVAILMENT OF THE BENEFITS AND PROTECTION OF THE LAWS OF THE FORUM STATE.

The case at bench raises the issue of personal jurisdiction in a cause of action predicated on product liability. It is appropriate to consider here the opinion of the California Supreme Court in

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(footnote continued from page 3)
accident allegedly caused by a defective valve assembly manufactured by petitioner. Any concommitant contractual obligations as between petitioner and respondent are of little effect in determining the issue at bench. Petitioner's relationship with the forum State, albeit indirect, is predicated on systematic and continuous economic activity. "Hence, if the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve *directly or indirectly*, the market for its product in other states, it is not unreasonable to subject it to jurisdiction in one of those states its allegedly defective product has there been the source of injury to its owner or to others." *World-Wide Volkswagen, supra,* 444 U.S. at p. 567. (Emphasis added.)

Buckeye Boiler Co. v. Superior Court, 71 Cal.2d 893 [80 Cal.Rptr. 113, 348 P.2d 57] (1969), for its discussion of the standard (first delineated in *International Shoe, supra,* 326 U.S. at p. 319, and reiterated in *Hanson v. Denckla,* 357 U.S. 235, 253 [78 S.Ct. 1228, 2 L.Ed. 2d 1283] (1958)) that the "presence" of a defendant in a forum state will depend on the quality and nature of the defendant's activity within the forum state as this standard specifically operates in the products liability context. Particularly, the California Supreme Court opinion analyzed the statement in *Hanson* that "there must be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." *Buckeye Boiler Co. v. Superior Court, supra,* 71 Cal.2d at p. 898, quoting *Hanson v. Denckla, supra,* 357 U.S. 251, 253. Although the requirement of purposeful availment does no more than re-state the *International Shoe* definition of "presence" as discussed above, apparently the *Hanson* statement has been read as imposing an additional threshold which must be crossed in order to impose personal jurisdiction.

The Court reasoned that the *Hanson* requirement of purposeful activity within the forum state "is designed to demonstrate that the defendant has invoked [the] benefits and protection and is *therefore* amenable to jurisdiction in at least some cases. *Buckeye Boiler Co. v. Superior Court, supra,* 17 Cal.2d at pp. 902, 903, quoting *Hanson v. Denckla, supra,* 357 U.S. 235, 253. Having recognized that an enterprise "obtain[s] the benefits and protections of [California's] laws", if, as a

matter of *commercial actuality*, [it] has engaged in economic activity within [California] . . ." (*Buckeye Boiler Co. v. Superior Court, supra*, 17 Cal.2d at p. 901, quoting *Empire Steel Corp. v. Superior Court*, 56 Cal.2d 823, 834 [17 Cal.Rptr. 150, 366 P.2d 502] (1953)) (italics added by the Court), the Court equated engaging in economic activity "as a matter of commercial actuality" with the act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state. *Buckeye Boiler Co. v. Superior Court, supra*, 17 Cal.2d at p. 901. Perhaps foreshadowing the opinion of this Court in *World-Wide Volkswagen*, the California Supreme Court cited *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432 [176 N.E.2d 761, 766] (1961), for the proposition that, although indirect, the benefits (and protection) derived from the laws of a forum state by a non-resident manufacturer are nevertheless essential to the conduct of business; thus, "if the manufacturer sells its products in circumstances such that it knows or should reasonably anticipate that they will ultimately be resold in a particular state, it should be held to have purposefully availed itself of the market for its product in that state." *Buckeye Boiler Co. v. Superior Court, supra*, 71 Cal.2d at p. 902.

Harking back to the admonition in *International Shoe* that determination of the criteria for determining "presence" can be neither mechanical nor quantitative (*International Shoe, supra*, 326 U.S. at p. 319), the Court in *Buckeye Boiler Co. v. Superior Court* explicitly disapproved a mechanical approach to determining the existence of purposeful activity inasmuch as a mechanistic approach fails to focus on economic reality. *Buckeye*

Boiler Co. v. Superior Court, supra, 71 Cal.2d at p. 903. (Eg., does defendant have office, property, agent, employees, jobber, distributor, manufacturer's agent or other representative; is there solicitation or advertising; or was the sale made *in California. Buckeye Boiler Co. v. Superior Court, supra,* at p. 903.) The Court would rather approach the existence of purposeful activity by a determination that the "manufacturer [has] engage[d] in economic activity within the forum as a matter of 'commercial actuality' whenever the purchase or use of its product within the state generates gross income for the manufacturer and is not so fortuitous or unforeseeable as to negative the existence of an intent on the manufacturer's part to bring about this result." *Buckeye Boiler Co. v. Superior Court, supra,* at p. 902.

Amicus suggests that the opinion in *Buckeye* comports with the standards set forth in *International Shoe* for determining whether a manufacturer's "presence" is sufficient to support *in personam* jurisdiction. The nature and quality of the activities of a manufacturer which engages in economic activity in a forum state as a matter of "commercial actuality" are such that the benefits invoked generate concommitant burdens when the product from which economic benefit is derived causes injury in the forum state. Thus, in the present case, petitioner has engaged in economic activity and derived gross income from the purchase in California of petitioner's product; moreover, the purchase of petitioner's product in California was neither fortuitous nor unforeseeable. Therefore, petitioner has, as a matter of "commercial actuality" purposefully availed itself of the benefit of

the laws of California and is therefore amenable *in personam* to the jurisdiction of California.

III

PETITIONER'S ACTIVITY IN THE FORUM STATE GAVE RISE TO THE CAUSE OF ACTION IN THE FORUM STATE; THEREFORE, NEITHER IS PETITIONER UNDULY BURDENED IN RESPONDING TO SUIT IN THE FORUM STATE, NOR IS THE FORUM STATE OVER-REACHING ITS SOVEREIGN POWER TO TRY THE CAUSE IN ITS COURTS.

This Court had occasion to address the sufficiency of "presence" to establish *in personam* jurisdiction in a product liability context in *World-Wide Volkswagen*. Notwithstanding the fact that the petitioners in *World-Wide Volkswagen* were late on the chain of manufacture and distribution, this Court's analysis is pertinent to certain elements of the case at bench.

In re-affirming the "minimum contacts" criteria requisite to the exercise of personal jurisdiction over a non-resident defendant, this Court recognized, as did the Court in *International Shoe*, that inconvenience to the defendant of litigating in a distant forum and restraint on the States to ensure their status as coequal sovereigns are relevant to the determination of whether "the quality and nature of the activity in relation to the fair and orderly administration of the laws" satisfies the demands of due process. *World-Wide Volkswagen, supra,* 444 U.S. at p. 292. (See also *International Shoe, supra,* 326 U.S. at pp. 317, 319: "... the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporations

behalf are not enough to subject it to suit on *causes of action unconnected with the activity* there. To require the corporation *in such circumstances* to defend the suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process. . . . [To] the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.")

Amicus suggests that when the threshold question of whether the activity of a non-resident corporation in a forum is sufficient to establish "presence" is answered affirmatively, neither is the non-resident corporation unduly burdened in responding to suit in that forum, nor is the state over-reaching its sovereign power to try the cause in its courts. Therefore, where, as here, the non-resident corporation has with knowledge continuously and systematically injected its product into the market of a forum state, thus establishing minimum contacts with the forum, the non-resident corporation must respond to obligations incurred when its product causes injury in that forum, and the state is justified in its assertion of personal jurisdiction in the cause arising out of such forum-related activity.

A.

PETITIONER'S SALE OF ITS PRODUCT WAS PURPOSEFULLY DIRECTED TOWARD RESIDENTS OF THE FORUM STATE; THEREFORE, PETITIONER MAY NOT ASSERT AN ABSENCE OF PHYSICAL CONTACTS TO DEFEAT JURISDICTION.

This Court in *World-Wide Volkswagen* noted that the relaxation of the limits imposed on state jurisdiction was "largely attributable to a fundamental transformation in the national economy." 444 U.S. at p. 293. The global economy has concurrently experienced a radical transformation, to which the description cited by this Court in *World-Wide Volkswagen* is equally apposite (Amicus takes literary license in the following quotation):

> Today many commercial transactions touch two or more [nations] and may involve parties [located on separate] continent[s]. With this increasing [inter]nationalization of commerce has come a great increase in the amount of business conducted by mail [and telecommunications] across [national] lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a state in which he engages in economic activity.

McGee v. International Life Ins. Co., 355 U.S. 220, 223 [78 S.Ct. 199, 2 L.Ed 2d 223] (1957). Again referencing the need for increased jurisdiction as a corollary of the increased flow of commerce consequent to technological progress, this Court cited *Hanson v. Denckla* for its caution that the trend relaxing the limits on state jurisdiction does not herald "the demise of all restrictions on the personal jurisdiction of state courts." *World-Wide*

Volkswagen, supra, 444 U.S. at p. 294 quoting *Hanson v. Denckla, supra,* 357 U.S. at pp. 250-251. In this context, this Court re-affirmed the "minimum contacts" standard of *International Shoe* as a measure of the guarantee of Due Process: ". . . [A] state may [not] make binding a judgment in personam against an individual or corporate defendant with which the state has no contact, ties or relations." *World-Wide Volkswagen, supra,* 444 U.S. at p. 294, quoting *International Shoe, supra,* 326 U.S. at p. 319.

This Court has recognized that, with the advent of high technology, the "minimum contacts" standard may no longer depend on the *physical* "presence" of corporate agents to conclude that the nature and quality of the activity is sufficient for Due Process purposes. Advanced telecommunications and computer devices and an extensive global system of marketing and distribution of component and finished products permit manufacturers to introduce their products into a global stream of commerce without the necessity of establishing a traditional presence in every forum in which the product will be purchased or used.

> Hence, if the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly *or indirectly,* the market for its product in other states, it is not unreasonable to subject it to suit in one of those States if it's allegedly defective merchandise has there been the source of injury to its owner or others.

World-Wide Volkswagen, supra, 444 U.S. at p. 297. (Emphasis added.) This Court in *International Shoe* provided the rationale upon which corporate "presence" is predicated for Due Process purposes. Stipulating that the fictional nature of a corporation is intended to be acted upon as though it were a fact, the Court concluded that "the terms 'present' or 'presence' are used merely to symbolize those activities of the corporation's agent within the state which the courts will deem to be sufficient to satisfy the demands of due process." *International Shoe, supra,* 326 U.S. at pp. 316, 317, citing L. Hand, J., in *Hutchinson v. Chase & Gilbert,* 2 Cir., 45 F.2d 139, 141. The argument may be made that the reference to the activities of the Corporation's agent would require the traditional physical "presence" of a corporate agent to satisfy Due Process demands. Such an argument, while perhaps appropriate to the economic realities of 1945, would reveal an utter lack of comprehension of the economic realities existing some forty years after *International Shoe.* (See "Appendix" *infra,* at pp. A-1, *et seq.*) "Jurisdiction in these circumstances may not be avoided merely because the defendant did not physically enter the forum state. . . [It] is an inescapable fact of modern *commercial* life that a substantial amount of business is transacted solely by mail and wire communication across state lines, thus obviating the need for physical presence within a State in which business is conducted. So long as a commercial actor's efforts are 'purposefully directed' toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can

defeat personal jurisdiction. (Citations omitted.)" *Burger King Corporation v. Rudzewicz,* 105 S.Ct. 2174, 2184 (1985).

As the facts of this case exemplify, the circumstance in which a manufacturer in one nation provides a component part to a manufacturer in another nation for incorporation into a finished product, and delivery to a third nation, contains no element of speculation. In this context the "presence" of the product in a forum is equivalent to the "presence" of the corporate agent. If the fictional nature of a corporation is intended to be acted upon as though it were a fact, undeniably, the factual "presence" of a manufacturer's product, whether a component part or a finished product, is no less representative of the corporate personality than the factual "presence" of a corporate agent. Moreover, the factual "presence" of the product in a forum may give rise to obligations upon which the corporation may be sued no less than the activities of the corporate agent in a forum may give rise to corporate liabilities. To assert a lack of personal jurisdiction based upon the absence of a corporate agent in a forum is to disregard the admonition that ". . . the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical nor quantitative." *International Shoe, supra,* 326 U.S. at p. 319.

B.

THE NATURE AND QUALITY OF PETITIONER'S ACTIVITY IN THE FORUM STATE IN RELATION TO THE FAIR AND ORDERLY ADMINISTRATION OF THE LAWS OF THE FORUM STATE WAS SUCH THAT PETITIONER

COULD REASONABLY ANTICIPATE BEING HALED INTO COURT IN THE FORUM STATE.

In *World-Wide Volkswagen*, this Court was confronted with a product liability action in which petitioner's contact with the forum state was "foreseeable" in terms of the intended use of the product; nevertheless, the majority described petitioner's conduct as an isolated fortuitous circumstance. *World-Wide Volkswagen, supra,* 444 U.S. at p. 295. As Justice Marshall acknowledged in his dissent, reasonable minds might differ as to whether the "presence" of petitioner's product in the forum was sufficient to satisfy the requirements of *International Shoe*. *World-Wide Volkswagen, supra,* 444 U.S. at p. 298, dis. opn. of Marshall, J. In that case, petitioner's activity, as viewed in the spectrum of "presence" established in *International Shoe* (see *International Shoe, supra,* 326 U.S. at pp. 317, 318), might be construed as either a single or occasional act which, because of its nature and quality is deemed sufficient to render the corporation liable to suit, or, alternatively, as an occasional act sufficient to impose liability but not thought to confer upon the state authority to enforce the liability. *Ibid.* In the case at bench, however, the "presence" of petitioner's product in the forum state was neither a single or occasional act nor isolated and fortuitous. The "presence" of petitioner's product in the forum was the result of continuous and systematic activity which gave rise to the liability sued on. In the present case, therefore, petitioner's conduct and connection with the forum state, as viewed in the *International Shoe* spectrum of "presence," cannot be doubted.

The "foreseeability" analysis posited in *World-Wide Volkswagen* (. . . "the foreseeability that is critical to due process analysis is . . .that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there... " [444 U.S. at p. 297]) explicitly referred to the *International Shoe* premise that "the nature and quality of the activity in relation to the fair and orderly administration of the laws" (*International Shoe, supra,* 326 U.S. at p. 319) shall determine the sufficiency of Due Process. Thus, where the nature and quality of the activity is such that a non-resident corporation systematically and continuously delivers its product into a forum market, directly or indirectly, with knowledge that the product will be present in the forum state, and the presence of the product in the forum gives rise to the action sued on, the requirements of "foreseeability" as to the manufacturer have been met.

C.

PETITIONER PURPOSEFULLY AVAILED ITSELF OF THE BENEFITS AND PROTECTION OF THE LAWS OF THE FORUM STATE WHEN IT DELIVERED ITS PRODUCT INTO THE STREAM OF COMMERCE WITH THE EXPECTATION THAT THE PRODUCT WOULD BE PURCHASED BY CONSUMERS IN THE FORUM STATE.

This Court in *World-Wide Volkswagen* approached the concept of "purposeful availment" in the context of asserting jurisdiction over a non-resident manufacturer or distributor, and concluded ". . .[I]f its allegedly defective merchandise has there been the source of injury to its owner or to others [, the] forum

State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." *World-Wide Volkswagen, supra,* 444 U.S. at pp. 297, 298, citing *Gray v. American Radiator & Standard Sanitary Corp.,* 22 Ill.2d 432, 176 N.E.2d 761 (1961).

Examination of this proposition within the spectrum of "presence" formulated in *International Shoe* places the nature and quality of the activity well within the demarcation sufficient to satisfy Due Process. "Presence in the state. . . has never been doubted when the activities of the corporation there have not only been systematic and continous, but also give rise to the liabilities sued on. . ." *International Shoe, supra,* 326 U.S. at p. 317. Where the corporate personality has manifested its "presence" in the form of a product delivered into the stream of commerce with expectation of purchase in a forum, the correlative corporate "presence" is evident.

Further support for finding corporate "presence" in the commercial sphere is provided by Justice Marshall. "Manifestly, the 'quality and nature' of commercial activity is different for purposes of the *International Shoe* test from actions from which a defendant obtains no economic advantage. Commercial activity is more likely to cause effects in a larger sphere, and the actor derives an economic benefit that makes it fair to require him to answer for his conduct where its effects are felt. The profits may be used to pay the costs of the suit, and knowing that the activity is likely to have effects in other States the defendant can readily

insure against the costs of those effects, thereby sparing himself much of the inconvenience of defending in a distant forum." *World-Wide Volkswagen, supra,* 444 U.S. at p. 316, dis. opn. of Marshall, J. Amicus submits that this statement is equally applicable to products, whether component or finished, which originate in forums without our national boundaries. If the States have permitted foreign manufacturers to enter the forum market, those manufacturers must be held to the same standards of responsibility for their product as a domestic manufacturer. Given the global nature of the economy, it defies logic to permit a manufacturer to escape liability engendered by its defective product on the basis of national boundaries.

D.

WHERE PETITIONER, A COMPONENT PART MANUFACTURER, RELIED ON THE PURCHASE BY ANOTHER PARTY FOR INCORPORATION AND DISTRIBUTION OF PETITIONER'S PRODUCT AS A FINISHED PRODUCT, THE INCORPORATION AND DISTRIBUTION OF THE FINISHED PRODUCT DOES NOT CONSTITUTE UNILATERAL ACTIVITY.

In *World-Wide Volkswagen,* this Court noted the absence of evidence that petitioner's activity occurred outside a specified geographical area. Further, this Court stated that although it was foreseeable that in the course of its intended use, an automobile would be taken outside the forum of purchase, ". . .the mere 'unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum state'." *World-Wide Volkswagen, supra,* 444

U.S. 298, quoting *Hanson v. Denckla, supra,* 357 U.S. at p. 253 . The passage quoted continues: "The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." *Hanson v. Denckla, supra,* 357 U.S. at p. 253, citing *International Shoe, supra,* 326 U.S. at p. 319. The Court in *Hanson* explicitly referred to "unilateral activity" relative to whether the nature and quality of the activity constitutes sufficient "presence." The Court had previously explained that the cause of action at bench did not arise out of an act done or a transaction consumated in the forum State. *Hanson v. Denckla, supra,* 357 U.S. at p. 252. Thus, it is not difficult to characterize the case in *Hanson v. Denckla* as lying beyond the spectrum of "presence" envisioned in *International Shoe.* To the contrary, the facts of the present case show that the nature and quality of the activity of petitioner were such to invoke the benefits and protections of the laws of California. In *Kulko v. Superior Court,* this Court determined that the "unilateral activity" of "sending a child to California to live with her mother is not a commercial act and connotes no intent to obtain or expectancy of receiving a corresponding benefit in the State that would make fair the assertion of that State's judicial jurisdiction." *Kulko v. Superior Court* , 436 U.S. 84 (1978).

The Court differentiated the question of jurisdiction in a domestic context and a commercial setting and explained that the extension of *in personam* jurisdiction was attributable to

nationalization of commerce and concurrent technological developments contributing to a reduction of the burden of defense in a forum in which economic activity occurs. *Kulko v. Superior Court, supra,* 436 U.S. at p. 101, citing *McGee v. International Life Ins. Co., supra,* 355 U.S. at pp. 222-223. Respondent's purchase of 1,350,000 valve asemblies from petitioner, for incorporation into respondent's finished product and ultimate purchase in a variety of international markets may hardly be termed "unilateral activity" on the part of respondent. Petitioner relies, as do other manufacturers of component products, on the activity of those who incorporate the component and distribute the finished product for purchase. Only spurious logic could conclude that the activity of the respondent in this circumstance comprises "unilateral activity."

In *Burger King Corporation v. Rudzewicz,* this Court expressly re-affirmed its statement in *World-Wide Volkswagen* that " . . .[t]he forum state does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its product into the stream of commerce with the expectation that they will be purchased by consumers in the forum State and these products subsequently injure forum consumers." *Burger King Corporation v. Rudzewicz, supra,* 105 S.Ct. at p. 2185, quoting *World-Wide Volkswagen, supra,* 444 U.S. at pp. 297-298. Amicus submits that petitioner in the case at bench has delivered 1,350,000 valve assemblies into the stream of commerce with the expectation that consumers in California would purchase its product. Moreover, petitioner's product allegedly injured one forum consumer and caused the

death of another forum consumer. Conclusively, California has not exceeded its powers under the Due Process Clause by asserting personal jurisdiction over petitioner.

IV.

PETITIONER HAS NOT PRESENTED COMPELLING CASE THAT SOME OTHER CONSIDERATION WOULD RENDER JURISDICTION UNREASONABLE, AND THE INTERESTS OF THE FORUM STATE AND RESPONDENT OUTWEIGH ANY CONTENTION OF INCONVENIENCE TO PETITIONER OF DEFENSE IN THE FORUM STATE; THEREFORE, FAIR PLAY AND SUBSTANTIAL JUSTICE ARE SERVED BY EXERCISE OF JURISDICTION.

Amicus believes that the evidence shows petitioner has purposefully established minimum contacts within the forum State of California predicated on application of the "stream of commerce" theory described in *World-Wide Volkswagen*. *World-Wide Volkswagen, supra,* 444 U.S. at pp. 297-298. However, according to this Court, ". . . these contacts *may* be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice'." *Burger King Corporation v. Rudzewicz, supra,* 105 S.Ct. at p. 2184, quoting *International Shoe, supra,* 326 U.S. at p. 320. (Emphasis added.) Five factors *may* be evaluated in "appropriate cases" to determine whether fair play and substantial justice are served in asserting personal jurisdiction. *Burger King Corporlation v. Rudzewicz, supra,* 105 S.Ct. at p. 2184 . (Emphasis added.) Amicus would draw attention to the language which indicates that this additional analysis is permissive rather than mandatory. Amicus

further asserts that, where the stream of commerce theory provides the predicate for personal jurisdiction, and the presence of the manufacturer's product in the forum in which injury occurs is neither isolated nor fortuitous, fair play and substantial justice are presumptively served when personal jurisdiction is imposed upon the product manufacturer. This contention is supported by the rationale proposed by Justice Marshall relative to activity in the commercial sphere which provides economic benefit from the activity that makes it fair to require [the manufacturer] to answer for his conduct where its effects are felt. *World-Wide Volkswagen, supra,* 444 U.S. at p. 317, dis. opn., Marshall, J.

If the first factor to be evaluated is "the burden on the defendant" (*Burger King Corporation v. Rudzewicz, supra,* 105 S.Ct. at p. 2184, quoting *World-Wide Volkswagen, supra,* 444 U.S. at p. 292), and the product manufacturer has purposefully derived benefit from the market for its product in the forum, ". . . the Due Process Clause may not be wielded as a territorial shield to avoid interstate obligations. . ." *Burger King Corporation v. Rudzewicz, supra,* 105 S.Ct. 2183. Moreover, the technological developments which have afforded manufacturers access to global markets have diminished the burden of defense in a forum from which economic benefit has been extracted by the manufacturer. Therefore, where minimum contacts have been founded on the manufacturer's activity in the stream of commerce, any consideration of burden on the manufacturer should be accorded minimal weight, if any, in balancing the five factors relative to fair play and substantial justice.

In the present case, petitioner contends, without supporting evidence, that it would be inconvenienced by California's assertion of personal jurisdiction. *Asahi Metal Industry Co., Ltd., supra,* 39 Cal.3d at p. 37. "Where a defendant who purposefully has directed his activities at forum residents seeks to assert jurisdiction, he must present a *compelling case* that some other consideration would render jurisdiction unreasonable." *Burger King Corporation v. Rudzewicz, supra,* 105 S.Ct. at p. 2185. (Emphasis added.) Petitioner has failed to present the requisite compelling evidence; therefore, in view of the fact that the remaining factors weigh in favor of California's assertion of personal jurisdiction, substantial justice and fair play are served by holding petitioner to answer for its allegedly defective product in California's courts. As to "the forum States' interest in adjudicating the dispute" (*World-Wide Volkswagen, supra,* 444 U.S. at p. 292), California has an interest in adjudicating an indemnity dispute between two foreign manufacturers. The fact that one party seeking indemnity or contribution is a foreign corporation rather than an original injured plaintiff, is not adequate justification for immunizing a party potentially liable under the laws of the forum where the injury occurred. *Asahi Metal Industry Co., Ltd., supra,* 39 Cal.3d at p. 39. Moreover, California has an interest in the orderly administration of its' laws, including assuming jurisdiction where, as here, most of the evidence, testimonial and otherwise, is within the forum where injury occurred. *Asahi Metal Industry Co., Ltd., supra,* at p. 39.

As to the "plaintiff's interest in obtaining convenient and effective relief" (*World-Wide Volkswagen, supra,* at p. 292), respondent here has named numerous defendants, including petitioner, in its cross-complaint. *Asahi Metal Industry Co., Ltd., supra,* 39 Cal.3d at p. 39. Thus, both respondent and the forum have an interest in precluding the possibility of inconsistent verdicts and multiple adjudications in this action. "[T]he interstate judicial system interest in obtaining the most efficient resolution of controversies" (*World-Wide Volkswagen, supra,* 444 U.S. at p. 292) does not appear to be implicated in the case at bench. However, the "shared interest of the several States in furthering substantive social policies" (*World-Wide Volkswagen, supra,* 444 U.S. at p. 292) will be seriously hampered in application of the social policies underlying product liability law should this Court determine that a component part manufacturer is immune to assertion of personal jurisdiction in a forum where the purposeful "presence" of its product caused injury. Petitioner has not presented a compelling case that jurisdiction is unreasonable. The interests of the forum State and respondent strongly outweigh any contention of the inconvenience of defense in the forum state. Therefore, amicus believes that, on balance, fair play and substantial justrice are served by California's exercise of jurisdiction over petitioner in the case at bench.

V.

CONCLUSION

For the reasons stated herein, amicus curiae respectfully requests that the judgment of the Supreme Court of the State of California be affirmed.

Respectfully submitted,

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APPENDIX

Overview of Global Economic Structure, With Emphasis on Japan/California/USA Interaction

This case involves a Japanese manufacturer of valve stem assemblies which sold its component part to a Taiwanese tire manufacturer for incorporation into a finished product which was then distributed to, among other markets, California. This case presents an issue of considerable significance in the context of the emerging global economy. The simplicity of the facts belie an underlying complexity in the economic realities of the technological era, the ramifications of which we are only beginning to understand. For this reason, amicus wishes to present an overview of the economic structure in which this case arises.

For the first time in three hundred years, the political and economic axis of the world is shifting away from the Atlantic Ocean to the Pacific Basin. Japan today is the center of an economic whirlwind around which swirl Hong Kong, Taiwan, South Korea, Singapore and perhaps the West Coast of the United States. Today, the Japanese, the leaders of the revolution in high technology, are invading the economies of countries everywhere, capturing huge shares of the domestic markets on every continent.

Before the death of the old Industrial Age, Japan had already emerged as the ultimate victor in the international economic game. By the middle 1970's it had caught up with, and finally surpassed, the West in the manufacture of steel, ships, machines and, of course, cars. In the new high technology age, Japan is one of the great leaders in robots, bioengineering and microelectronics. Its semiconductor industry controls the biggest chunk of the global market, and its consumer-electronics industry dominates America and Europe. (See Nussbaum, *The World After Oil*, 1983, pp. 224-225.) During the past quarter-century, Singapore, South Korea, Taiwan and Hong Kong have followed Japan's lead, riding their labor-intensive, export-led economies through what Asia scholar Lucien W. Pye calls "the longest period of rapidly rising economic growth ever experienced in human history." (*Insight*, The Washington Times, Booming Asia at the Crossroads, May 12, 1986, p. 6.)

The President's Commission on Industrial Competitiveness fears that the United States is being left behind in the escalating global competition for markets. It regards the challenge to the

long term health of the U. S. economy as serious enough to merit the creation of two new cabinet-level federal departments. America's chronic trade deficits ($107 billion last year) represent only the tip of the iceberg. World trade, now worth some $2 trillion annually, grew sevenfold between 1970 and 1984. National boundaries no longer shelter domestic industry: 70 percent of all goods "made in the U.S.A.," whether sold here or abroad, face foreign competition in the marketplace. (See The Wilson Quarterly, "Global Competition: The New Reality" Summer 1985 p. 42, from The President's Commission on Industrial Competitiveness.)

"Lobbying, as a form of open participation in the political process, is a concept alien to East Asians," notes Youngnok Koo, a political scientist at Seoul National University. Yet there are nearly 300 registered lobbyists from Japan, South Korean, and Taiwan in the United States capital, as well as representatives from American law and public relations firms, that look after the interests of these countries. The Japanese alone, Koo estimates, spend between $40 and $50 million to maintain a Washington presence, which includes not only 182 registered lobbyists but also 80 embassy staffers and emissaries from more than 65 companies and trade associations. The East Asian lobbies share a primary goal: to keep the American market open to Asian goods. Last year, the combined Japanese, Korean and Taiwanese trade surplus with the United States was $47 billion - about one-third of the U. S. trade deficit. With the largest lobby in Washington, Japan, Koo says, "gets the most out of what there is to get in Washington." (See The Wilson Quarterly/Winter 1985 from "East Asian Lobbies in Washington: Comparative Strategies," a

paper presented by Youngnok Koo at a colloquium sponsored by the Wilson Center's East Asian Program on May 14, 1985.)

In 1977, the volume of American trade across the Pacific exceeded Atlantic trade for the first time. It now accounts for about one-quarter of all U.S. exports and one-third of all imports. Within the past 20 years, the center of world economic gravity has shifted westward. By the end of this century, the Pacific region will account for half of the world's gross national product. While U. S. consumers provided the market for Pacific trade expansion, Japan supplied the model and the momentum. Viewing the world as its marketplace, Japan averaged more than 10 percent annual GNP growth during the 60's. Its dynamic economy withstood the oil shocks of 1973 and 1978 and today holds a trade advantage of about $148 billion over the United States. Following Japan's lead, the newly industrialized countries of Singapore, Hong Kong, Korea and Taiwan began to redirect their own economies. Farther down the Pacific, the ASEAN countries - anchored by Australia and New Zealand - are trading and investing more aggressively in the Pacific markets. Canada is also participating more actively in international trade. (See Golden State Report, May 1986, p. 10.)

California's Top Trading Partners on the Pacific Rim
(1984, in $ billions)

	California exports to:	California imports from:
Japan	$7.7	$20.4
Taiwan	1.8	5.2
South Korea	2.8	3.6
Hong Kong	1.6	2.3
Australia	2.8	.5
Singapore	1.8	1.5

(Golden State Report, May, 1986, p. 10 [Source: Security Pacific Bank].)

To fuel its tremendous economic machine, Japan has built an organizational structure that draws out savings from its people and redirects it to industry. Japan has the highest savings rate in the industrialized world. At 18 percent it is three times the average U. S. rate of 6 percent. What has distinguished Japan from other countries in saving is the government policies that have been implemented to encourage and reinforce those habits. The government uses the Postal Savings system as a national drainage system for capital. By allowing tax-free interests on several accounts held in several names in a family, the government actively encourages people to put their cash into this national trust fund, which provides about $40 billion a year. The government then converts it into long-term, low interest loans to industry for growth and exports. This savings structure was created by the Japanese after World War II to insure a steady flow of cheap credit to its companies. It has since provided an extra edge to Japan in world competition. For the past thirty-five years Japanese corporations have had access to extremely cheap, low-interest capital for modernizing their plants and equipment. Just as important,

Japanese companies haven't had to worry about the vagaries of the stock market when making their investment plans. They always have a great deal of debt capital to make them run and very few stockholders demanding a quick return on an investment. (See Nussbaum, *The World After Oil*, pp. 234-236.)

In an historic break with tradition, the Tokyo Stock Exchange sold seats to six foreign brokerage houses. The six new members are expected to take their seats early next year. They will be able to underwrite Japanese securities, participate in mergers, and execute their own trades, saving the 27 percent commission split they formerly paid to Japanese traders. "Tokyo's an imperative for any preeminent financial institution," says Charles Ross, chairman of Merrill Lynch International. "It's the second largest equity market in the world and is an essential component of the New York-London-Tokyo Triangle. . ." (*Fortune*, January 6, 1986, p. 8.)

"The equity markets of East Asia," says Nicholas Bratt, a managing director at the investment advisory firm of Scudder, Stevens & Clark, "provide the most attractive investment prospects of any in the world over the medium and long term." (*Fortune*, August 19, 1985, p. 225.) Governed by different legal systems and regulations, other countries permit consumers to assume more risk than in the U. S. and allow manufacturers to assume less. [The staying power of the large U. S. companies] might seem to give them an opportunity to raise prices once competitors have quit because the cost of insurance may exceed manufacturing costs. Not necessarily. In industries as diverse as light aircraft, truck wheel rims, machine tools, and industrial machinery - businesses with long-lived products - U.S. product liability law has given

foreign manufacturers the advantage. American manufacturers remain liable for their products as long as they are in use. Having recently entered the U.S. market, foreigners typically do not carry this burden. Nor do foreigners carry heavy insurance burdens at home. A recent study by the American Textile Machinery Association found that foreign manufacturers of machine tools and other hardware used in the workplace pay only 1 percent to 5 percent as much for liability insurance in their home markets. In Europe and Japan, employees rely on workers' compensation payments for workplace injuries rather than on suing. (*Fortune*, March 3, 1986, pp. 20, 23.)

Tokyo has established a kind of no-fault insurance, administered by the government, whereby automatic (though modest) compensation for victims of car accidents, defective drugs, and the like is routinely awarded. Japanese attitudes toward the law still reflect the older Confucian system, under which it was "the duty of the faithful commoner not to disturb the lord's peace by becoming too involved in a lawsuit." An obstinate commoner who pursued his grievance in court might find himself dealt with as harshly by the Judge as a guilty defendant. Thus, while Americans see the law as "a set of neutral principles that serve as an arbiter of human affairs," the Japanese see it as a source of trouble. Japan's courts impose a stiff tax on plaintiffs, and court delays - even longer than in the United States - are not entirely accidental. (The Wilson Quarterly/Autumn 1984, "The Role of Law and Lawyers in Japan and the United States," from transcript of a discussion sponsored by the Wilson Center's East Asia Program, June 6, 1983.)

Japanese government spending, including that by cities, accounts for 10 percent of the country's GNP. The comparable figure in the U.S. is 34 percent. By national concensus , the Japanese defense budget is held to 1 percent of GNP, or about $13 billion currently. For that sum Japan maintains a defense force of 243,000 men, 1,050 tanks, 308 fighter planes, 107 patrol planes, 471 Surface ships, and 14 submarines. It has no bombers or carriers for long-range attack. The comparable ratio of defense to GNP is 7 percent for the U.S. (*Fortune,* September 2, 1985, pp. 86-87.)

Among the six major NATO countries the United States represents 61 percent of the GNP and 48 percent of the population, but contributes 74 percent of the defense spending and 57 percent of the active military and civilian personnel. Although these disparities may not seem large, an equal split in these two categories would reduce annual defense spending by $47 billion and its manning levels by 488,600 people. If the rest of the NATO members and Japan are included in these calculations, then the United States would exceed its annual spending share by $80 billion and its personnel share by 720,000. (Foreign Policy, Number 60 Fall, 1985, p. 108.)

In the early years of modernization in the mid-nineteenth century, the government sent thousands of Japanese abroad to learn the "secret" of industrialization. After World War II, the Ministry of International Trade and Industry (MITI) was formed. It is MITI's job to set industrial policy in Japan. In the late 1950's it was MITI that decided that consumer electronics would power Japan through the late 1960's as the wave of the future. It was MITI in the late 1970's that emphasized the need for advanced

semiconductors and sharply pared back the oil-intensive aluminum and chemical industries. And it is MITI that has now decided that Japan should have a national goal of winning for its new computer industry 30 percent of the worldwide market share and 18 percent of the U.S. market by 1990. Through JETRO, the Japan External Trade Organization, MITI has eighty offices around the world, with nine in the United States. The job of JETRO is to read all the technical material coming out of foreign countries, digest it and send it back to Japan. In Japan itself, an informal process of intense communication between MITI, the biggest corporations and the government goes on continuously. MITI is at the heart of this discussion, and distills the common themes and makes decisions on the direction of the country for future growth. MITI will publish a general policy paper outlining the technologies the country will attempt to develop and starts pumping money into research. The usual pattern is for MITI, through the Japan Development Bank, to put up $200 million to $300 million for a project and invite a select group of companies, who also put up their own funds, to join in. MITI's projects always focus on basic research, never on merchandising any specific product. The companies, for their part, proceed to scour the United States and Europe for information on the new technology. Once there is a sufficient pool of advanced technology available, it is shared among the participants. Intense competition then takes place as new products using the new technology are brought out. When access to the technology becomes more available, other companies enter the competition. When the most efficient companies emerge from the competition in the domestic economy, they begin to move abroad. Japan has managed to keep its huge domestic market hermetically sealed

against any foreign company that it wishes to keep at bay. [illegible]ose companies invited in possess technology that Japan cannot license or purchase abroad. And even then, Japan, using the same strategy as France and other European countries, insists on trading access to its internal market for technology. By keeping the domestic market closed, the Japanese are able to raise the production volume on their new products sharply and thereby lower prices significantly. ,

After detailed market research, they begin exporting. A narrow market niche is found abroad, and high-quality low-cost items are poured into it. They then move on and expand that niche, moving to capture ever more of the larger market, building greater sophistication and value-added into their products. The target is always greater market share and the time frame is always the long term. The Japanese are ferocious discounters, willing to buy their way into markets, thus opening themselves up to charges of "dumping." When the Japanese meet opposition, either commercial or political, the strategy is accommodation, and they will pull back and negotiate over market share. Part of the accommodation is the building of factories overseas to satisfy local markets. By providing jobs domestically and by getting under the tariff wires, the Japanese hope to circumvent rising protectionism against them. (Nussbaum, *The World After Oil*, pp. 240-246.)

Japan is largely the reason for world-wide over-capacity in semiconductor chips. Since Japanese companies believe that dominating chips is key to dominating the electronic industries, they have been investing in semiconducter plants at rates of 27 percent of sales for new plants and equipment vs. 18 percent for U.S. firms. In 1985, armed with huge, highly efficient factories and willing to buy market share at almost any price, they drove

every U.S. chipmaker except Texas Instruments, AT&T, and tiny Micron Technology of Boise, Idaho, out of the $500 million a year market for the hottest selling type of D-RAM. The Japanese also stepped up their attack on the market for E-PROMs. Between January and November 1985, average prices for the fastest selling type of E-PROM dropped from $17 to $4. American chipmakers contend that below $6.85, nobody makes money on E-PROMs. (*Fortune*, January 6, 1986, pp. 82, 83.)

Roughly two-thirds of U.S. exports to Japan consist of raw materials or semi-finished products, while over 85% of Japan's exports to the U.S. are finished manufactured goods - a pattern that resembles trade between a developed and developing country. Years could pass before U.S. exports to Japan contain a significantly larger share of higher value-added goods. (*Fortune*, June 10, 1985, p. 49.)

Japanese corporations have been investing heavily overseas, creating new industries and jobs. From 1951 to 1972, Japan invested $303 million directly in U.S. and Canadian manufacturing industries. By 1982, the total rose to $3.9 billion. It reached $16.5 billion in March 1984. (By then, Japanese companies were majority stockholders in 300 U.S. manufacturing firms, employing 73,000 workers.) (The Wilson Quarterly/Autumn 1985, from "Japan's Real Trade Policy" by Kiyohiko Fukushima, In Foreign Policy (Summer 1985).)

In increasing numbers, Japanese corporations are either opening factories on U.S. soil or entering into joint ventures with American firms. In most cases, U.S. firms do the research and development for the product, carry out the final assembly of component parts, and handle the marketing and distribution. The

Japanese handle the complex manufacturing process in between, where they have the advantage in quality and price over their American competitors. One result is that old distinctions between Japanese and U.S. goods are blurring. An arrangement that provides American workers with jobs and U.S. consumers with inexpensive goods seems ideal. "Except for one thing," notes Robert Reich, a Harvard public-policy analyst. As the Japanese take over more and more of the production process, "they develop the collective capacity to transform raw ideas quickly into world class goods" - skill he fears that American workers and managers are losing. Most of the final assembly jobs that Japanese managers now consign to U.S. workers are relatively simple and likely to be largely eliminated by automation; research and development generates few jobs; domestic marketing and distribution are tasks that Americans would perform anyway. (Wilson Quarterly/Spring 1985, p. 20 from "Japan, U.S.A.", by Robert B. Reich, in The New Republic (Nov. 26, 1984).)

The fourth-biggest maker of American cars isn't American. It's Japan's Honda, which this year will turn out more American cars than American Motors, the perennial No. 4 up to now. Since the Japanese government will allow Honda to export only about 400,000 cars to the U.S. in 1985, and since U.S. buyers want a lot more than that, Honda can easily sell every car its Ohio factory can make - this year about 150,000. While the Big Three must periodically offer cut-rate financing to move inventory, Honda makes what many buyers consider better cars for less money. And it appears to earn a considerable profit on them. Many of Honda's American workers are young, so they aren't drawing many medical benefits or any retirement benefits yet. The total compensation of

Honda's U.S. workers is about $14 an hour, compared with $23 or so at the Big Three's unionized plants. Honda also uses less expensive components than U.S. makers and often gets better quality for its money. Parts representing about half the value of a U.S. built Honda are imported from Japan. To keep its edge, Honda also spends heavily on research and development - about 5 percent of gross sales, compared with an average of 4 percent for U.S. carmakers. (*Fortune*, October 28, 1985, pp. 30-32.)

The companies doing the most business in Japan usually ignore conventional wisdom. For example, speakers at seminars put on by the U.S. Department of Commerce often suggest that a company set up a wholly owned subsidiary as a base for business in Japan. But it is wiser to form a partnership with a Japanese Company. In data communications, technology doesn't get any more basic than what is called the source code, or the internal operating system that controls a machine. "Not only did we develop a partnership with a Japanese company, Japan Direx Corp., but we also gave it our source code. In short, *we gave away the store*." (*Fortune*, January 20, 1986, "How We Sold Japan's Toughest Customer", by Thomas Alexander, senior vice president in charge of field operations for Infotron Systems Corp., a New Jersey manufacturer of data communications equipment.) (Emphasis added.)